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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CENTERSTONE DEVELOPMENT CO.  
et al.,

Plaintiffs and Respondents,

v.

KIRK S. EVANS,

Defendant and Appellant.

G032399

(Super. Ct. No. 00CC03689)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, John M. Watson, Judge. Affirmed in part and reversed in part.

Allen Matkins Leck Gamble & Mallory, Thomas E. Gibbs and Luke G. Anderson for Plaintiffs and Respondents.

Law Offices of Randall S. Waier and Randall S. Waier for Defendant and Appellant.

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This case returns to us on defendant Kirk Evans's appeal of attorney fees and costs the trial court awarded after remittitur. He contends the trial court lacked subject matter jurisdiction to make any award of fees or costs, and, alternatively, that the request for fees and costs for defendant's opposition to the motion to enforce the settlement was untimely. The trial court had jurisdiction to hear the motion for attorney fees and costs and to award them for plaintiffs' opposition to the writ petition and for the filing of the motion to recover fees. The trial court had no jurisdiction to award attorney fees for plaintiffs' opposition to the motion to enforce the settlement, and we reverse the order to that extent, and remand for a determination of the amount of attorney fees and costs, excluding any amount for opposition to that motion.

## FACTS

As set out in our first opinion (*Evans v. Superior Court* (Dec. 23, 2002, G030788) [nonpub. opn.]), defendant filed a motion in the trial court to enforce a settlement 18 months after the underlying action had been dismissed with prejudice. (*Id.* at p. 2.) After the motion was denied for lack of jurisdiction, defendant filed a writ petition, which we likewise denied for lack of jurisdiction. In our opinion we awarded costs to plaintiffs. (*Id.* at p. 4.)

Before the remittitur issued, plaintiffs filed with us a motion for attorney fees and costs, a memorandum of costs, and a motion asking that this court retain jurisdiction and stay issuance of the remittitur pending a determination of that claim. We denied the motion to stay. Attorneys for both parties testified they telephoned the clerks' office for clarification of the order and were told it also applied to the motion for attorney fees and costs.

Plaintiffs then sent a written request for clarification of the ruling, asking that we reconsider our rulings. Plaintiffs referred to our opinion where we determined

that the trial court had lost jurisdiction, and relying on California Rules of Court, rule 56.4, asserted that “the interests of justice require this Court to determine the award of fees and costs.” We did not respond to the letter and subsequently issued a remittitur which stated, “See decision for costs determination[.]”

After the case was returned to the trial court, plaintiffs filed a motion for costs and attorney fees incurred in opposing defendant’s motion to enforce the settlement agreement, contesting the writ proceeding, and for bringing the motion itself for a total of just under \$36,500 in fees and approximately \$230 in costs. Fees were broken down as follows: approximately \$15,200 for opposing the motion to enforce the settlement, approximately \$17,300 for opposing the writ petition, and \$3,980 for filing the motion to recover the attorney fees and costs. The court’s tentative ruling was to grant the motion and award just under \$12,000. At oral argument, plaintiffs requested an additional \$1,680 for appearing at the motion. After argument, the court awarded plaintiffs approximately \$26,400.

## DISCUSSION

### *The Trial Court Had Jurisdiction to Award Attorney Fees After Remittitur*

Defendant contends the trial court had no jurisdiction to award attorney fees after remittitur. Interpreting what is not the clearest argument, we believe defendant claims that the attorney fees provision is in the settlement agreement which we determined he could not enforce by motion because there was no action pending after the case was dismissed with prejudice. Thus, he argues, there is no basis for an award of any attorney fees. We disagree.

The Court of Appeal’s remittitur confers jurisdiction on the trial court to the extent set out therein. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 701.) Here, the remittitur awarded costs to plaintiffs. (*Evans v. Superior Court, supra*,

G030788, at p. 4.) Costs recoverable in a writ proceeding include those set out in California Rules of Court, rule 27. (Cal. Rules of Court, rule 56.4(b) [former rule 26 is now rule 27].) Under California Rules of Court, rule 27(c)(2), an award of costs allows the party to seek attorney fees under California Rules of Court, rule 870.2. Rule 870.2(c)(1) provides for recovery of attorney fees pursuant to a contract. The trial court has jurisdiction to award such fees even without specific authorization in the opinion or the remittitur. (*Harbour Landing-Dolfann, Ltd. v. Anderson* (1996) 48 Cal.App.4th 260, 262.)

Here, the settlement agreement defendant sought to enforce contains an attorney fees provision. The fact that there was no action pending in which the settlement agreement could be enforced does not eliminate the provision in the agreement. Nor does it override the fact that plaintiffs had to oppose the motion. This is analogous to the situation where a party to an action on a contract containing an attorney fee provision prevails by showing the contract is inapplicable. If the other party could have recovered attorney fees had it prevailed, the prevailing party is entitled to an award of fees. (*Yuba Cypress Housing Partners, Ltd. v. Area Developers* (2002) 98 Cal.App.4th 1077, 1081.) So are the plaintiffs here.

#### *This Court Did Not Rule on a Motion for Attorney Fees*

Defendant erroneously claims plaintiffs are not entitled to attorney fees or costs on appeal because we denied their motion for same. Contrary to that assertion, however, we made no such ruling. Despite both parties' characterization of our response to the motions plaintiffs filed with us, the only ruling we made was to deny the motion to stay issuance of the remittitur. We did not rule on the motion for attorney fees and costs. Rather, we issued a remittitur that referred to our decision for the costs award. We ordered the trial court to make the determination, and it did so.

*Plaintiffs Are Not Entitled to Attorney Fees for Opposing the Motion to Enforce the Settlement Agreement*

As noted above, our opinion set out the trial court's jurisdiction in awarding fees and costs. We did not provide for an award of costs for anything other than the writ proceeding, and by extension, fees for filing the motion to recover them. "[T]he terms of the remittitur define the trial court's jurisdiction to act." (*Snukal v. Flightways Manufacturing, Inc.* (2000) 23 Cal.4th 754, 774, fn. 5.) "[A]ny action beyond that is void [citation] . . . ." (See *Plumbing etc. Employers Council v. Quillin* (1976) 64 Cal.App.3d 215, 223.)

It is impossible to determine from the record how the trial court arrived at the \$26,400 award. Generally, a trial court has broad discretion to fix the amount of attorney fees awarded. (*Contractors Labor Pool, Inc. v. Westway Contractors, Inc.* (1997) 53 Cal.App.4th 152, 168.) An experienced trial judge is best qualified to decide the value of an attorney's services in a given matter, and on appeal we will not reverse that decision unless it is clearly wrong. (*11382 Beach Partnership v. Libaw* (1999) 70 Cal.App.4th 212, 220.)

Here, however, the amount of attorney fees awarded exceeds the total amount requested for opposing the writ and the motion to recover fees. By necessity, then, it must include some amount for opposing the original motion to enforce the settlement. That part of the award was in excess of the trial court's jurisdiction and must be reversed. We remand the case back to the trial court to make the proper determination of the amount of attorney fees.

DISPOSITION

The order is reversed to the extent it includes an award of attorney fees for respondents' opposition to appellant's motion to enforce the settlement agreement. The

case is remanded for the trial court to redetermine the amount of attorney fees allowed under the terms of this decision. In the interests of justice, the parties shall bear their own attorney fees and costs on appeal.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

O'LEARY, J.

MOORE, J.